

REMARKS

Rejections Under 35 U.S.C. § 112, ¶ 1

The Examiner rejects claim 35, which recites (as amended):

The portable wireless media access device of claim 33, wherein the transceiver receives the audio/video content over the wireless network from the content server via another remote wireless devices.

for purportedly lacking written description. See *Office Action*, 5. Specifically, the Examiner contends that “there is no support for receiving the audio/video content from more than one remote wireless device.” *Id.* The Applicant respectfully disagrees as the specification supports such an embodiment as described on page 9 of the originally filed specification. The specification states that “[t]he transceiver 69 allow the apparatus 11 to **transact a wireless communications session with a remote device . . . including similarly equipped systems . . .** as further described below with reference to FIGURE 8.” *Specification*, 9:2-8 (emphasis added).

FIGURE 8, in turn, concerns the delivery of content from a billboard interface 170. See, generally, *Specification*, 9:27 *et seq.* The billboard interface is capable of delivery content to a user through an “interactive session.” *Id.* at 10:8. The billboard is also capable of operating as a “cellular telephone array or similar wireless carrier.” *Id.* at 10:8-9. The billboard may be optionally interfaced to sources of content through “land lines with a dial up or dedicated network connection.” *Id.* at 10:3-4. If the billboard is capable as acting as an intermediate or proxy source of content that is received via the land line or dedicated network connection, then written description support exists for a more generic wireless device, including similarly equipped portable wireless device systems as referenced on page nine, line five of the specification, including proxy based functionality (*i.e.*, ‘as further described with reference to FIGURE 8’).

With these remarks in mind, and which evidence the capability of proxy interactivity for content, the Examiner's rejection of claim 37 is believed to have been overcome. See *Office Action*, 5. More specifically, if another wireless device may operate as a proxy source of content from the video server, then there is no reason why a network of portable media devices may not operate as content sources as the specification clearly states that the apparatus "can form a mini local area network . . . [and] interact with other participating systems." *Specification*, 4:27-28. Absent the interaction of multiple devices (*i.e.*, more than one wireless device), the concept of a network becomes meaningless as one device interacting with one host is point-to-point communication—not a local *area* network.

35 U.S.C. § 103(a) Rejections per Tran and Whiteside

The Examiner rejects the independent claim 35 U.S.C. § 103(a) over *Tran* and *Whiteside*.

Claim 25 recites, as amended, and in relevant part:

a proximity sensor coupled to the transceiver and that scans for and detects a remote wireless device capable of transacting a wireless communications session over the wireless network with the portable wireless media access device, **the scanning and detection by the sensor occurring automatically and without human interaction.**

Support for the bold portion of amended claim 25 may be found at page 4, lines 23-27 of the *Specification*, which describes the apparatus "continuously scanning for other similarly equipped systems . . . [and] automatically detect[ing] other compatible devices." The *Specification* further describes that "proximity sensor 70 and transceiver 69 cooperatively enable the apparatus 11 to recognize and initiate a communications session." *Specification*, 9:4-5. Further reference is made in the context of FIGURE 8 where "[t]he proximity sensor 70 . . . enable[s] the apparatus 11 to automatically detect" sources of media content. *Id.* at 9:28-29.

The *Whiteside* reference requires that a user manually perform a scanning step rather than such an operation taking place automatically and without human intervention. See *Whiteside*, col. 1, l. 29-31; 2, l. 40-41, 47-49. To suggest that *Whiteside* concerns ‘automatic’ detection would be to fundamentally change the operation of the reference, which rebuts a *prima facie* case of obviousness. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984); see also MPEP § 2143.01(V). Notwithstanding the required change to the underlying functionality of the reference, one skilled in the art would not look to *Whiteside* as it teaches away from the claimed invention. See *In re Graddelli*, 713 F.2d 731 (Fed. Cir. 1983); see also MPEP § 2145(X)(D)(2). That one skilled in the art would not look to the teachings of *Whiteside* also counters any suggestion of a *prima facie* case of obviousness.

In that the combination of *Tran* and *Whiteside* requires a fundamental change to an underlying reference in addition to that one skilled in the art would not seek out the teachings of *Whiteside* due to its inherently manual nature weights against a finding of obviousness. Any claim dependent from the present independent claim is likewise non-obvious for at least the same reason. The applicant respectfully contends that the rejection is overcome.

CONCLUSION

The Applicant submits that all pending claims are allowable. If the Examiner has any questions concerning this amendment or the application in general, the Examiner is invited to contact undersigned representative concerning the same.

Respectfully submitted,
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